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8 *Lead Counsel for Plaintiffs and the [Proposed] Class*

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 In re Silver Wheaton Corp.
12 Securities Litigation

Case No.: 2:15-cv-05146-CAS(JEMx)
c/w 2:15-cv-05173-CAS(JEMx)

13 CLASS ACTION

14 Judge: Hon. John E. McDermott
15 Courtroom: C – 8th Floor

16 **REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE (LETTER**
17 **ROGATORY) TO PRICEWATERHOUSECOOPERS LLP (CANADA)**
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2 The United States District Court for the Central District of California
3 presents its compliments to the appropriate judicial authorities, Ministry of Justice
4 for British Columbia, Order in Council Administration Office, 1001 Douglas Street,
5 (P.O. Box 9280 Stn Prov Govt), Victoria, British Columbia, V8W 2C5, Canada, and
6 requests international judicial assistance to obtain documentary evidence from a
7 non-party witness located in British Columbia, Canada to be used for a civil trial
8 before this Court ("Letter of Request"). Based on Plaintiffs' allegations, this Court
9 finds that there are sufficient grounds to obtain documentary evidence from
10 PricewaterhouseCoopers LLP (Canada) ("PwC") in the above-referenced class
11 action ("Action") and should be produced in the interests of justice.

12 This Letter of Request is made pursuant to, and in conformity with, the
13 Canada Evidence Act, R.S.C. 1985, c. C-5, Part II, § 46(1), and the British
14 Columbia Evidence Act, R.S.B.C. 1996, Chapter 124, § 53(1).

15 Based on the Plaintiffs' allegations and the evidence produced in the case
16 through discovery, this Court finds there are sufficient grounds to obtain
17 documentary evidence sought through this Letter of Request, attached hereto as
18 Exhibit A that may be highly relevant to the issues in dispute. This Letter of
19 Request fully complies with the Canada Evidence Act and the British Columbia
20 Evidence Act.

21 The particulars of this Letter of Request follow:

22 SECTION I

23 1. Sender / Requesting Authority:

24
25 Laurence M. Rosen
26 The Rosen Law Firm, P.A.
27 275 Madison Avenue, 34th Floor
28 New York, NY 10016
USA
Telephone: (212) 686-1060
Facsimile: 212-202-3827

1 Email: lrosen@rosenlegal.com

2 *Requesting Authority:*

3
4 Honorable John E. McDermott, United States Magistrate Judge
5 United States District Court for the Central District of California
6 Spring Street Federal Courthouse,
7 312 N. Spring Street,
8 Courtroom 8C, 8th Floor,
9 Los Angeles, CA 90012
10 USA

11 **2. To the Appropriate Authority in Canada / The Receiving Judicial**
12 **Authority:**

13 Ministry of Justice for British Columbia,
14 Order in Council Administration Office,
15 1001 Douglas Street,
16 (P.O. Box 9280 Stn Prov Govt),
17 Victoria, British Columbia,
18 V8W 2C5,
19 Canada

20 **3. Person to Whom the Executed Request is to be Returned:**

21 Laurence M. Rosen
22 The Rosen Law Firm, P.A.,
23 275 Madison Avenue, 34th Floor
24 New York, NY 10016
25 USA
26 Telephone: (212) 686-1060
27 Facsimile: 212-202-3827
28 Email: lrosen@rosenlegal.com

4. Request for assistance

Pursuant to the Canada Evidence Act, R.S.C. 1985, c. C-5 and the British Columbia Evidence Act, R.S.B.C. 1996, this Court respectfully requests the assistance described herein as necessary to further the interests of justice.

The Requesting Authority respectfully requests that PricewaterhouseCoopers

1 LLP (Canada) ("PwC") be ordered to produce the documents set out in Exhibit A
2 hereto directly to counsel for Plaintiffs in the above-captioned matter. PwC's
3 address is:

4 PricewaterhouseCoopers
5 250 Howe Street, Suite 1400
6 Vancouver, British Columbia V6C 3S7
7 Canada

8 The Requesting Authority further requests that, following production, at a
9 mutually agreeable time, the attorneys for Plaintiffs in the above-captioned matter,
10 as officers of this Court, be permitted to orally examine one or more of the
11 following employees of PwC:

12 Elizabeth Finch (or other PwC employee to be identified)
13 250 Howe Street, Suite 1400
14 Vancouver, British Columbia V6C 3S7
15 Canada

16 -and/or-

17 Other PwC employees with knowledge

18 **5. Name of the Case and Any Identifying Number**

19 *Chris Masillionis v. Silver Wheaton Corp. et al*, Docket No. 2:15-cv-05146
20 (C.D. Cal. Jul 08, 2015), United States District Court for the Central District of
21 California

22 **6. Names and Addresses of the Parties and Their Representatives of the**
23 **Case**

24 **a. Plaintiffs**

25 The Plaintiffs are Lead Plaintiff Joe Elek, and named Plaintiffs Thomas
26 Bartsch, Jeffrey Frohwerk, Larry Brandow, Diana Choi, Ben Potaracke, Charles
27 Montgomery, Jędrzej Borowczyk, and Charles Remmel, individually and on behalf
28 of all others similarly situated:

Represented by:

THE ROSEN LAW FIRM, P.A.

Laurence M. Rosen
355 South Grand Avenue, 2450
Los Angeles, CA 90071
Telephone: (213) 785-2610
Facsimile: (213) 226-2684
Email: lrosen@rosenlegal.com

Lead Counsel for Plaintiffs and [proposed] Counsel for the Class

b. Defendants

The Defendants are Silver Wheaton Corp. ("SW"), Randy V. J. Smallwood, Peter Barnes, and Gary Brown (the "Defendants"):
Represented by:

WILSON SONSINI GOODRICH & ROSATI PC

Barry M. Kaplan
Gregory L. Watts
701 Fifth Avenue, Suite 5100
Seattle, WA 98104
Telephone: (206) 447-0900
Facsimile: (206) 883-2699
Email: bkaplan@wsgr.com
Email: gwatts@wsgr.com

WILSON SONSINI GOODRICH & ROSATI PC

Jerome F Birn, Jr.
650 Page Mill Road
Palo Alto, CA 94304
Telephone: (650) 493-9300
Fax: (650) 565-5100

Counsel for Defendants Silver Wheaton Corp., Randy V. J. Smallwood, Peter Barnes, and Gary Brown

7. Nature and Purpose of the Proceedings and Summary of the Facts

Nature and Purpose of the Claims

The claims in this class action arise under Sections 10(b) and 20(a) of the

1 U.S. Securities Exchange of 1934 (“Exchange Act”) and Rule 10b-5 promulgated
 2 thereunder.¹ These claims are brought on behalf of a putative class consisting of all
 3 persons and entities who purchased the publically traded securities of Silver
 4 Wheaton Corp. (“SW”) (i) on a United States exchange, or (ii) in a transaction in
 5 the United States, during the period from March 30, 2011 to July 6, 2015, inclusive,
 6 and did not sell such securities prior to July 6, 2015 (the “Class”).² On June 6,
 7 2016, the court denied Defendants’ motion to dismiss the claims asserted in
 8 Plaintiffs’ amended complaint filed on December 18, 2016. *See* Exhibit C.
 9 Defendants have filed an Answer in which they have denied all allegations of
 10 wrongdoing asserted in the Amended Complaint. *See* Exhibit D.

11 **Plaintiffs’ Allegations**

12 **i. Plaintiffs’ Claims Generally**

13 As more fully set out in Exhibit B, Plaintiffs allege that the Defendants
 14 violated the Exchange Act by concealing from investors that they had concealed
 15 over \$567 million in Canadian income in the period between 2005 and 2010.
 16 Plaintiffs allege that because SW had underpaid income tax in 2005-2010,
 17 accounting principles required Defendants to record or disclose on SW’s financial
 18 statements filed during the Class Period a contingent tax liability of approximately
 19 \$207 million relating to the income it had concealed. Plaintiffs allege that by
 20 omitting such disclosure, Defendants artificially inflated SW’s stock price.
 21 Plaintiffs allege that on July 6, 2015, SW announced that the Canada Revenue
 22 Agency (the “CRA”) had reassessed its taxes for the years 2005-2010, resulting in
 23 liability of \$207 million (the “Reassessment”). Plaintiffs allege that the next day,
 24

25 ¹ SW’s stock traded on the New York Stock Exchange (the “NYSE”).

26 ² Excluded from the Class are Defendants, all present and former officers and
 27 directors of SW and any subsidiary thereof, members of such excluded persons’
 28 families and their legal representatives, heirs, successors or assigns and any entity
 which such excluded persons controlled or in which they have or had a controlling
 interest.

1 the price of SW shares fell \$2.08 per share or approximately 12%.

2 **ii. Plaintiffs' Claims as They Relate to PwC**

3

4 PwC is not a party to this Action. However, evidence to support Plaintiffs'
5 claims or Defendants' defenses is undoubtedly in PwC's possession, custody or
6 control. SW has represented that it retained PwC to conduct transfer pricing studies
7 (the "Studies"), on which it represents it relied in taking its transfer pricing
8 position. It has cited the Studies as evidence both in this Action and its appeal of
9 the Reassessment.

10 Information concerning the scope of work for the Studies, the basis for the
11 Studies' conclusions and assumptions, and any presentations made by PwC to SW
12 concerning the Studies would be relevant to Plaintiffs' claims or Defendants'
13 defenses. Plaintiffs represent that they believe that PwC is the only party that has
14 possession, custody or control of a complete set of the Study-related documents
15 described in Exhibit A.

16 **8. Evidence to be Obtained and Purpose**

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18 This Court requests that the appropriate judicial authority in British
19 Columbia, Canada compel PwC to produce the documentary evidence described in
20 Exhibit A, and to designate a representative to sit for an examination. PwC is
21 located in British Columbia, Canada and the documentary evidence to be examined
22 is located outside of the United States.

23 Plaintiffs seek from PwC authenticated copies of the documents identified in
24 Exhibit A alleged to be relevant to the claims alleged in the Action. While this
25 Court expresses no view as to the merits of the Action or any related motions in the
26 Action, based on Plaintiffs' representations, it believes that the documentary
27 evidence sought here is relevant and probative of material facts for trial in the
28 Action and that production of this documentary evidence may advance the interests
of justice.

1 It is respectfully requested that the competent judicial authority in British
2 Columbia, Canada compel PwC to produce copies of the documents that are
3 identified in Exhibit A.

4 If any portion of this Letter of Request is deemed unacceptable under the
5 laws of British Columbia, Canada, please disregard that portion and continue to
6 comply with as much of the Letter of Request as is legally permissible.

7 **9. Statement of the Subject Matter About Which the Person Will be**
8 **Examined**

9
10 The Court requests the oral testimony under oath of the witnesses to be taken
11 by counsel for Plaintiffs. If local law does not permit the use of oath or affirmation,
12 then the evidence should be taken in the normal manner permitted by law. It is
13 requested that the examination be conducted in person and by video and
14 stenographic means, and continue from day to day until completed. In connection
15 with the taking of testimony of the witnesses, counsel for Plaintiffs has this Court's
16 permission to refer the witness to documents previously produced or available in
17 the U.S. proceedings.

18 The subject of the examinations of each of the witnesses may include:

- 19 • The facts concerning the documents produced in response to these
- 20 Requests.
- 21 • The facts concerning other documents produced in this action.
- 22 • The Studies, including any assumptions and limitations.
- 23 • The facts and circumstances of SLW's engagement of PwC to conduct
- 24 the Studies.
- 25 • Presentations of the Studies and their results made to SLW.

26 This Court confirms that it is proposed that the examination of each of the
27 witnesses occur at a mutually convenient location to be negotiated and agreed upon
28 by counsel and the witnesses, on mutually agreeable dates and times to be
coordinated by counsel and the witnesses, but in any event no later than August 31,

2017, provided however that the deposition(s) shall occur not less than 45 days after PwC has produced all required documents.

CONCLUSION

This Court, in the spirit of comity and reciprocity, hereby requests international judicial assistance in the form of this Letter of Request seeking information, documents, and things described herein from the Ministry of Justice for British Columbia. This Court extends to all judicial and other authorities of British Columbia, Canada the assurances of its highest consideration.

This Court expresses its sincere willingness to provide similar assistance to the courts of British Columbia, Canada if future circumstances require.

Date: March 8, 2017



HONORABLE JOHN E. McDERMOTT
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES, CALIFORNIA, UNITED STATES



Kiry K. Gray, Clerk of Court

by 
Deputy Clerk Sharon Anthony



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